IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3302 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DISTRICT CO-OP. MILK PRODUCERS SOC. LTD

Versus

GANESHBHAI M CHAUDHARY

Appearance:

MR AJAY R MEHTA for Petitioner

MR PK JANI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /04/2001

C.A.V. JUDGEMENT

1. The petitioner, through this petition, has challenged the Award of the Labour Court, Kalol, rendered on 3.11.1999 directing reinstatement of the respondent with full backwages.

2. The brief facts are that the respondent was an employee of the petitioner. The respondent remained absent on 2.7.1988, 5.7.1988 (half day) and 6.7.1988 and 7.7.1988. Leave Report dated 29.7.1988 was submitted by the respondent in respect of the aforesaid absence. Again on 9.7.1988, 12.7.1988 and 13.7.1988 the respondent remained absent and leave report in respect thereof dated 30.7.1988 was submitted by him allegedly bearing signature of the Assistant General Manager, the superior officer, who sanctions the leave. When the said leave reports were submitted it was found that signatures of the superior officer M.B.Chaudhary not to be his signatures and were found to be suspicious. Consequently enquiries were made with the Superior Officer who denied his signatures on the above leave reports. Departmental enquiry was conducted. Enquiry Officer, after conducting the enquiry submitted report. The Disciplinary Authority considering the report of the Enquiry Officer passed order of dismissal of the respondent. The respondent was afforded opportunity of hearing against proposed punishment and then final order of punishment was passed. Feeling aggrieved the respondent made reference to Assistant Labour Commissioner, who had referred the disputes to the Labour Court.

3. The Labour Court, after considering the respective cases of the parties rendered the impugned Award and set aside the order of dismissal and ordered reinstatement of the respondent with full backwages.

4. The grievance of the petitioner is that before the Labour Court purshis was given by the respondent that he did not challenge the legality and validity of the enquiry proceeding hence the Labour Court was in error in scrutinising the evidence and coming to the conclusion different from the conclusion arrived at by the Enquiry Officer and the Disciplinary Authority. According to the petitioner the allegation of forgery was a serious allegation and since it was upheld by the Enquiry Officer the Disciplinary Authority was justified in passing order of dismissal because the allegation of forgery which was proved against the respondent raised serious doubt in the mind of the petitioner about the integrity of the respondent. In the face of such doubt the petitioner was justified in dismissing the respondent. Further grievance of the petitioner is that since the respondent did not challenge the legality and validity of the enquiry proceeding the Labour Court should have confined its decision only to the quantum of punishment and not to the findings regarding the charge having been established

against the respondent.

5. The case of the respondent in the counter Affidavit is that on account of grudge and predetermination that order of dismissal has been passed against him and that the alleged charge is not at all proved by any cogent and reliable evidence. Accordingly the stand of the respondent is that the Labour Court was justified in setting aside the order of the disciplinary Authority.

6. Shri A.R.Mehta, learned counsel for the petitioner and Shri P.K.Jani, learned Counsel for the respondent were heard and the entire record, including counter Affidavit filed on the date of argument, was carefully examined.

7. Shri Mehta, relying upon decision of the Apex Court, in STATE OF A.P. v/s. SREE RAMA RAO, reported in AIR 1963 SC 1723, has contended that the scope of judicial review in such matters of disciplinary enquiry is very limited and the Labour Court could not have sit in as a Court of Appeal over the findings of the Enquiry Officer duly confirmed by the Disciplinary Authority. In this case, the Apex Court held that the High Court, under Article 226 of the Constitution, is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations

or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. According to Shri Mehta the same rule applies to Labour Court also because the Labour Court could not have acted as a Court of Appeal in coming to a different conclusion from the material on record. He further contended that once the respondent filed a purshis before the Labour Court not challenging the legality and validity of the enquiry proceeding it was not open to the Labour Court to enter into the merits of the case and reassess the evidence and come to a conclusion other than that arrived at by the Enquiry Officer and the Disciplinary Authority. According to Shri Mehta the Labour Court could have on these facts only decided whether punishment awarded was disproportionate to the charges established against the respondent.

8. Shri Mehta has further drawn my attention to Para : 5 of the Award in which after making reference to the purshis Ex.25 the Labour Court has observed that on the basis of this purshis of the second party issue that whether the departmental enquiry of the concerned employee which has been conducted by the company is legal or illegal is not required to be decided, but the issue whether the action of the company relieving the second party from service is legal or illegal remains to be decided. It remains to be decided as to whether the second party has really committed so called misconduct or not and whether the order which the company has passed relieving the second party is proper, in proportion of the misconduct or not.

9. Shri Mehta has vehemently challenged the approach of the Labour court mentioned in Para : 5 of the Award that it still remained to be decided as to whether the second party has really committed the so called misconduct or not. According to him this exercise could not be undertaken by the Labour Court inasmuch as it was not constituted as a Court of Appeal against the order of Disciplinary Authority. According to him only quantum of punishment should have been considered by the Labour Court. In my view before discussing the quantum of punishment the Labour Court was required to satisfy itself primafacie whether the charges were made out or not. If the charges were prima facie not made out then the conduct of the discplinary proceeding according to the rules of natural justice could not entitle the disciplinary authority to impose punishment of dismissal. In my opinion even while considering the question of quantum of punishment unless it is prima facie found that

the charges were established no finding could be given one way or the other about imposition of penalty. Without prima facie satisfaction that the charges were proved the Labour Court could not have applied its mind whether punishment imposed was proportionate or disproportionate to the charges established against the respondent.

10. The record has therefore to be examined in that line. While doing so I am not going to reassess the evidence on record. On the other hand it has to be ascertained what was the charge against the respondent and whether this charge was proved before the enquiry Officer or not.

11. Office order dated 26.8.1988, Page : 40/A of the compilation is in the nature of charge sheet and imputation of allegations. In this office order various dates on which the respondent remained absent have been given. It has also been indicated that leave reports were produced before the Time Keeper who doubted regarding signature of the sanctioning authority, namely, Assistant Manager (P & E). On doubting the signature enquiry was made, the papers were shown to the Labour Welfare Officer and those signatures were suspected to be forged. The respondent was asked about the matter and he admitted before the Assistant General Manager (PP & E) that he himself having made the said signatures and about he having made such signature many time earlier also it was found that in earlier leave reports also the respondent forged his signatures as sanctioner. On these imputations ultimate charge was that Shri Ganesh M. Chaudhary, namely, the respondent in this manner by forging the signature of the sanctioner had made attempt to commit fraud with the company and thereafter the Enquiry Officer was appointed. Thus, the substance of charge is that the respondent by forging the signature of the sanctioner, namely, Assistant General Manager (PP & E) had made attempt to commit fraud with the company. The next order dated 26.8.1988, page : 40/C is the suspension order against the respondent. These two orders were served by Registered A.D. Post, page : 41, which is zerox copy of acknowledgment due slip. Let us now examine the Enquiry Report to find out whether the Enquiry officer found the said charge established against the respondent. Page : 48/A is the report of the Enquiry Officer dated 6.4.1989. His ultimate conclusion in his report can be classified and placed in two parts. At one place the Enquiry Officer has observed that at the time of enquiry specimen signatures of both, Shri Ganesh M. Chaudhary and Shri Madhubhai M. Chaudhary, Assistant

General Manager (P P & E) have been taken at Annexure : A looking to which it clearly appears that the signatures which have been made as "M.V.C." in the leave report of Shri Ganesh M. Chaudhary having been made by the Assistant General Manager (PP & E) whereas looking to the shape of hand writing of Shri Ganesh M. Chaudhary the letters of signature of "M.V.C." made in the leave reports appeared to be matching to some extent but no clear opinion regarding this can be given. This part of the report of the Enquiry Officer does not take us anywhere inasmuch as the Enquiry Officer tried to compare the specimen signatures of the respondent and Assistant General Manager (PP & E) with the disputed signatures on leave reports. The Enquiry Officer could not give any clear opinion whether the disputed signature was of the respondent and whether the disputed signature and the specimen signature of the respondent were made by one and the same person. What was found by the Enquiry Officer was that the signatures of "M.V.C." made in the leave report to be matching to some extent. The Enquiry Officer was not an expert. It is admitted fact that no expert opinion was sought nor any report from expert was obtained that the disputed signatures on the leave reports purporting to have been made by the respondent were actually made by him and by non-else and that the disputed signatures on the leave report and the specimen signature taken before the Enquiry Officer were of the same person. On similar facts a Division bench of Jammu & Kashmir High Court in ZONAL MANAGER, LIC OF INDIA v/s. MOHAN LAL SARAF, reported in 1978 LAB.I.C. 1312, observed that in the absence of expert's report allegation regarding overwriting, tampering, erasing, etc. in the record by the delinquent alone cannot be said to have been established. The witnesses also did not state about tampering, etc. having been made by the delinquent nor the witnesses had any expert knowledge in the science of handwriting. On these facts it was observed by Division Bench of J & K High Court that "...a bald assertion by the prosecution witnesses who did not have any expert knowledge in the science of handwriting that the tampering, overwriting etc. was in the hand of the delinquent employee can not be any substitute for proof. It was essential for the department to lead some evidence to show that the respondent had tampered with the record." Similar are the facts before me. Here also three witnesses examined during the enquiry did not depose before the enquiry Officer that the respondent forged the signatures of the sanctioning Authority. No expert report was obtained. On these facts it cannot be said that the Enquiry Officer gave clear finding that the respondent had forged the signatures of Assistant General

Manager (PP & E) on the leave report. The Enquiry Officer himself was not clear and as such he observed that no clear opinion regarding this can be given. Admission is the best piece of evidence against its maker, but the admission has to be proved to have been made by the alleged maker. In the statement of charge it is mentioned that the respondent was asked about forging signature of the Assistant General Manager and he had admitted before the Assistant General Manager about he himself having made his signature and about having made such signatures many times also. Thus, forged signature alleged to have been made by the respondent could have been proved by examining the Assistant General Manager before whom the respondent made admission, but for the reasons best known to the petitioner the Assistant General Manager was not examined before the Enquiry Officer. Thus, this allegation also remained unproved.

12. The second part of the report of the Enquiry Officer is that it clearly appears that the signatures which are made as "M.V.C." in the leave report of Shri Ganesh G. Chaudhary absolutely are not of the Assistant General Manager (PP & E). This fact is not disputed. Proceeding on this finding of the Enquiry Officer can as a reasonable man say that simply because the signatures styled as "M.V.C." in the leave report of the respondent are not of the Assistant General Manager (PP & E) these signatures were certainly made and forged by the respondent. My answer to this is in negative. If this is so then the ultimate findings of the Enquiry Officer are firstly that no clear opinion can be given whether disputed and specimen signatures were made by one and the same person and that too by the respondent and secondly the disputed signatures were not the signatures of the Assistant General Manager.

13. It may not be out of place to mention that in the further Affidavit, Page : 52, of the Labour Officer of the petitioner company the xerox copies of leave report and specimen signatures taken before the Enquiry Officer have been annexed as Annexures : G & H. Even perusal by necked eye of all these three signatures viz. disputed signatures on Annexure : G and specimen signatures on Annexure : C, it can certainly be said that none of these three signatures match and tally. The letter formation, spacing, pen pressure and size, etc. of the letters differ. Consequently even in the absence of expert report it cannot be prima facie said that the respondent had forged the signatures of the Assistant General Manager on leave report.

14. As stated earlier the charge against the respondent was that he by forging the signatures of the sanctioner had made attempt to commit fraud with the company. The Enquiry Officer was required to give finding on this. There is no positive finding by the Enquiry Officer that the respondent had forged the signatures of the sanctioner, namely, the Assistant General Manager.

15. Shri Mehta, however, vehemently argued that it is established that the signatures on the leave report are not of Assistant General Manager. He further pointed out that the leave reports were placed before the Time Keeper by the respondent and in these circumstances safe inferences and presumption can be drawn that the forgery was committed by the beneficiary, namely, the respondent. I am, however, unable to draw such presumption or interference. When the Enquiry Officer did not draw such inference or presumption and did not hold in clear terms that the forgery, if any, was made by the respondent it would be going too far in accepting such contention to conclude in this petition that forgery in signature was committed by the respondent and none else. Likewise there is no finding of the Enquiry Officer that the respondent had made attempt to commit fraud with the company. If on these two points which were the subject matter of enquiry the Enquiry officer remained silent and did not give positive findings, it can hardly be said that the charge against the respondent was established. This observation can be made from the charge sheet and the report of the Enquiry officer without looking to other evidence and material on record and if this is so then it can safely be concluded that the charge against the respondent was not established by any cogent and reliable evidence. It is true that in a departmental enquiry charges against the delinquent are not to be proved like a criminal case beyond reasonable doubt and even on the basis of hearsay evidence and on the documents which have not been proved findings can be given against the delinquent as has been held in Zonal Manager, LIC of India v/s. Mohan Lal Saraf (Supra). It is equally true that in domestic enquiry keeping in view the preponderance of probabilities findings of guilt can be recorded but in the case before me there is no preponderance of probabilities against the respondent. Merely on the strength of suspicion or presumption of fact which is not conclusive evidence no findings of guilty can be recorded against the respondent. in this view of the matter the Labour Court was justified in setting aside the order of dismissal passed against the respondent.

16. Coming to the question of backwages the High Court will not interfere in findings of the Labour Court on this point. The reason is that the Labour Court has considered the deposition of the respondent wherein he stated that he is jobless and despite efforts having been made he could not get the job after he was dismissed from service. This statement was not controverted by any evidence from the side of the petitioner. The Labour Court has observed that regarding this, the company has nowhere proved in the cross examination of the employee that after the second party got relieved he got job elsewhere and earned. The Labour Court further found that the respondent was jobless and despite having made attempt to get job he did not get the job and therefore he is entitled to be reinstated in service with full backwages. The order for payment of full backwages, in these circumstances, is based on the material that the respondent had made efforts to get job after his dismissal, but he could not get the job and he was jobless till the Award was made. Consequently the order for payment of full backwages also requires no interference.

17. In the result I do not find any ground for interference in the impugned Award. As such the petition is liable to be dismissed and is hereby dismissed with no order as to costs.

April __, 2001 (D.C. Srivastava, J.)

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At this stage, Shri AR Mehta, learned counsel for the petitioner requests for time to file appeal and for continuance of the interim order dated 24-4-2000. On this request, interim order dated 24-4-2000 shall operate till June 18, 2001.

24-4-2001. (D. C. Srivastava, J.)